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Supreme Court of the United States

OCTOBER TERM 1971

No. 71-1211

CARLISLE SAPENTER and
HELEN EVANS SAPENTER,

Appellants-Petitioners
for Writ

versus

DREYCO, INCORPORATED,

Appellee-Defendant

PETITION FOR WRIT OF CERTIORARI TO REVIEW
THE DECISION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT
NO. 71-2186

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SUPREME COURT OF THE UNITED STATES

NO. _____.

CARLISLE SAPENTER and
HELEN EVANS SAPENTER,

Appellants-Petitioners
for Writ

versus

DREYCO, INCORPORATED,

Appellee-Defendant

PETITION FOR WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT NO. 71-2186

Carlisle Sapenter and Helen Evans Sapenter petition this Court for a Writ of Certiorari to issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the matter entitled "Carlisle Sapenter and Helen Evans Sapenter vs. Dreyco, Incorporated, No. 71-2186" of the Fifth Circuit Court of Appeals, dated November 30, 1971.

CITATIONS TO OPINIONS BELOW

A judgment of the United States District Court of the Eastern District of Louisiana, New Orleans Division, entitled "Carlisle Sapenter and Helen Evans Sapenter vs. Dreyco, Incorporated, No. 70-1795", denied the plaintiffs protection of the "Truth in Lending Act", U.S.C. Title 15, Sec. 1601, et seq., where plaintiffs' property used as a home was mortgaged by the defendant, Dreyco, Incorporated, without:

1. A three-day written Notice of Rescission. U.S.C. Title 15, Sec. 1635 (A).

2. The full written disclosure statement as provided by said Congressional Act where second mortgages are made on a person's home. U.S.C. Title 15, Sec. 1605-1631.

The United States Fifth Circuit Court of Appeals in proceedings entitled "Carlisle Sapenter and Helen Evans Sapenter vs. Dreyco, Incorporated, No. 71-2186" affirmed the judgment of the District Court.

The opinion of the United States District Court, appearing at Appendix A, and the opinion of the United States Fifth Circuit Court of Appeals appears at Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to Title 28, Sec. 1254 of the United States Code.

QUESTIONS PRESENTED

1. Error was committed in affirming the District Court judgment allowing a mortgage against the consumers' property used as their home in violation of U.S.C., Title 15, Secs. 1605, 1631 and 1635.

2. Error was committed in the Court holding that the second mortgage on petitioners' property used as their home was excluded from U.S.C. Title 15, Sec. 1601, etc., of the "Truth in Lending Act" enacted by Congress to protect consumer credit transactions.

3. Error was committed when the Court concluded that mortgage against petitioners property, used as their home, was excluded from the "Truth in Lending Act", U. S. C. Title 15, Sec. 1601, etc., because the purpose of the loan was to halt a foreclosure proceeding on a six unit apartment house being purchased by plaintiffs, part of which was to be used as their home.

4. Error was committed when the Court concluded that the purchase of a six unit apartment house by plaintiffs; part of which was to be used as their home, was a business or commercial transaction which excluded it from the "Truth in Lending Act" even though plaintiffs employment was that of a seaman, and even though he and his wife intended to use part of the six unit apartment building as their home.

STATEMENT OF THE CASE

Plaintiffs are man and wife. Their family purchased the property at 5822 Baccich Street in the City of New Orleans, which they have occupied as the family home. On this

property plaintiffs had a two mortgage lien; one in favor of a homestead association, and the second in favor of a private mortgage lender. Both of these mortgages were filed against the Baccich Street property (their home) prior to July of 1969 (prior to the TRUTH IN LENDING ACT). Petitioner, Carlisle Sapenter, was employed regularly as a seaman for many years prior to purchasing the property at 5822 Baccich Street, in the City of New Orleans, Louisiana. His wife, Helen Sapenter, was a housewife, not engaged in any employment. After the family purchased the Baccich Street property and were using it as their home, they were presented an opportunity to purchase for use, their family home property located at 2408 Chartres Street in the City of New Orleans, from the defendant, Dreyco, Incorporated, at a price of $56,000.00. It was plaintiffs' intention to occupy one of the units of the Chartres Street property and rent the other units to help pay for the mortgages on the Chartres Street property. The defendant agreed to deliver six completed units with refrigerators, air conditioners, ready for occupancy. But when the six units were not completed until four months after the act of transfer of the Chartres Street property, petitioner and his wife were unable to move into the uncompleted Chartres Street property, nor were they able to rent the other five units. This inability of defendant to complete the units caused petitioner to default on the three mortgage notes which he had against the Chartres Street property for its purchase.

After the 1st of July, 1969, plaintiff contends the defendant induced him and his wife to make another mortgage on the Chartres Street property in order to stop the foreclosure if plaintiff made another mortgage on

the property on petitioners' home at 5822 Baccich Street. A mortgage lien was filed against petitioners home at 5822 Baccich Street on August 26, 1969. The effective date of the "Truth in Lending Act" was the first day of July, 1969.

Several months thereafter, Dreyco, Inc., filed a second foreclosure suit against the Chartres Street property, forced it to be sold at public sale where the defendant purchased the property. Sapenter was never furnished an accounting by Dreyco, Inc., on Chartres Street property, nor was he aware that there was any delinquent balance still due after the public sale until several months later, when Sapenter was forced to relocate in his employment as a seaman to Houston, Texas and had to sell his property on Baccich Street with the purchaser assuming the balance due on the homestead mortgage liened against, and the second mortgage against the property. It was after this sale that Dreyco, Inc. made demand on Sapenter to pay up a $2500.00 mortgage lien filed against the Baccich Street property. Sapenter pleaded surprise, but on examination of court record discovered a third lien against the Baccich Street property in favor of Dreyco, Inc. The new purchaser demanded Sapenter and his wife clear the property of the illegal lien.

This suit was filed to stop action on the mortgage lien which was placed against the Baccich Street property in violation of the "Truth in Lending Act" by Dreyco, Inc., who admitted that it did not furnish Sapenter and his wife with a three-day written Notice of Right of Rescission, nor did it furnish Sapenter and his wife with a written disclosure statement as provided in the "Truth in Lending Act", but contended that the transaction

causing the mortgage lien for $2,500.00 against the Baccich Street property was in order to stop the foreclosure against the purchase of the Chartres Street property, which was excluded from the "Truth in Lending Act" because it was a mortgage lien made on petitioners' home for the purpose of business or commercial. The District Court agreed with the defendant, Dreyco, and dismissed the suit. The Fifth Circuit Court of Appeal affirmed the District Court's ruling. A petition for rehearing was filed, copy of which appears at Appendix C, which was denied by the Fifth Circuit Court of Appeal. The Fifth Circuit Court of Appeal granted a stay order to allow plaintiff to file this petition for writ of review with the United States Supreme Court.

A R G U M E N T.

Dreyco, the defendant, admitted that it had not complied with the "Truth in Lending Act" and, as an afterthought contends that the "Truth in Lending Act" does not apply. Sapenter contends that he is employed as a seaman and is not engaged in the business of owning real estate or investing in real estate. Sapenter contends that he purchased the Baccich Street property as his home and was using it as his home at the instance of the mortgage lien at issue before this Court. Sapenter further contends that he was in the process of purchasing the Chartres Street property, a six-unit apartment house which he intended to use one unit as his apartment and lease out the other five units. Sapenter contends that the District Court, as well as the Fifth Circuit Court of Appeals, committed reversible error which is injurious not only to him but to all consumers in the United States when the Court concluded that the purchasing of the six-unit apartment house, even if it were intended

to be used partly as petitioner's home, was an exemption from the Truth in Lending Act and in fact was "engaged in business activity". The Truth in Lending Act provides for definitions, but in its definitions it omits any definition of "business or commercial purposes".

Sapenter contends that the third mortgage lien filed against his Baccich Street property, which was used as his home at the time of the mortgage lien, violated U.S.C. Title 15, Secs. 1605, 1631 and 1635. It is admitted that U.S.C. Title 15, Sec. 1635(E) does exempt first mortgages against a person's home for monies borrowed to purchase the property, but the mortgage lien at question in this case was a third mortgage against petitioner's home. It is also true that the Act does exempt monies borrowed for "business or commercial purposes", which would indicate quite readily to the average citizen that a mortgage placed against your home in order to borrow money, say to use in your business or to invest in your business of whatever type of business it may be in which you are engaged, or let's say to purchase stock, would be exempted from the Truth in Lending Act; but can the same be said when you are purchasing another piece of property which you intend to use as your home. If Sapenter was engaged in the business of owning real estate and was merely purchasing another investment property, the Trial Court and the Appellate Court would have been correct. Sapenter lived in the Baccich Street property as his home. Sapenter intended to occupy the Chartres Street property as his home. How then can the Court say that the loan made on the Baccich Street property in order to keep the Chartres Street property out of foreclosure was in fact a "business or commercial" transaction? Sapenter is engaged in the normal business of a

seaman and has never owned property prior to his ownership of the Baccich Street property, but by the Court's decision it is concluded erroneously that Sapenter is engaged in the business of buying and selling real estate.

The Consumer Credit Guide published by the Commerce Clearing House, Inc., defines a residence under Section 2510(Y) as follows: "A residence means any real estate in which the customer resides or expects to reside." The term includes "a parcel of land on which the customer resides or expects to reside". It was error for the District Court in the Sapenter proceedings, affirmed by the Appellate Court, to conclude that the mortgage placed on the Baccich Street property, in order to assist him in purchasing the six-unit apartment building, was exempted from U.S.C. Title 15, Sec. 1601, because it was a loan made on his home for "business or commercial purposes".

The intent of Congress in enacting the "Truth in Lending Act" was to provide the owner of a home or a person who was in the process of purchasing a home with two essential notices as a prerequisite to the validity of mortgage liens:

1. A three-day written notice of intention to lien or mortgage your home, with the right to rescind. U.S.C. Title 15, Sec. 1635(A).

2. A written statement disclosing the terms and conditions of the finance charges, the interest, the monthly payments as provided in the Truth in Lending Act. U.S.C. Title 15, Secs. 1605 and 1631.

Neither of the above requirements were complied with.

Assuming, for the purpose of argument, that the District Court was correct in concluding that a credit transaction for business purpose or commercial purpose is an exception to the Truth in Lending Act, how then do we interpret "business purpose or commercial purpose"? Other agencies of the United States Government have interpreted this same clause differently than this Court. The Brittanica dictionary describes business as "a business is what one follows regularly and for profit". The Webster's Third New International dictionary describes business as follows: "An activity engaged in as normal, logical or inevitable, and usually extending over a considerable period of time". "Or, commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of power and decision". For a similar type definition of business, see Bowen v. Merchants Mutual Casualty Co., 107 A. 2(d) 379; Suburbia Garden Nursery, Inc. v. St. Louis County, 377 S.W. 2(d) 266; Trade Commission v. Skaggs Drug Centers, 446 P. 2(d) 958; in re Mobile 278 F. 949, 950; U.S. v. A Certain Distillery, 24 F.2(d) 557, 559. Black's Law Dictionary, Third Edition, defines business as "that which occupires the time, attention and labor of men for the purpose of livelihood or profit * * * business is often synonymous with calling, occupation or trade. The doing of a single act pertaining to a particular business will not be considered engaged in or carrying on a business; yet a series of such acts would be so considered." The Supreme Court of Louisiana in Schlesinger v. Fontenot, 102 So.2d 488, concluded that "engaging in trade or business, for income tax purposes,

implies an element of continuity or business practice, regular occupation or employment and not occasional, isolated or disconnected acts". In the Schlesinger case, the Court held that the taxpayer, in purchasing three pieces of improved property in Memphis, Tennessee, and collected rents thereon until they were able to consolidate the properties and sell them at a net gain, was not carrying on a business, and that the Memphis properties were a capital asset. In Higgins v. Commissioner of Internal Revenue, 312 U.S. 212, 61 S.Ct. 475, the United States Supreme Court held that to determine whether activity of a taxpayer is "carrying on a business" requires an examination of the facts in each case.

The District Court and the Appellate Court committed error in determining that the petitioner was engaged in business or commercial activities, and therefore the mortgage placed on petitioner's property used as his home did not violate U.S.C. Title 15, Sec. 1601, et seq.

CONCLUSION

Dreyco, Incorporated, filed a third mortgage lien against petitioner's property on Baccich Street without the requisites of the "Truth in Lending Act" as provided in U.S.C. Title 15, Sec. 1601, et seq., enacted by the United States Congress to protect the consumer credit and property owners. This Court should reverse the decision of the Fifth Circuit Court of Appeals in this matter.

Respectfully submitted,

JESSE S. GUILLOT
838 Gravier Street
New Orleans, Louisiana 70112

PROOF OF SERVICE

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared Jesse S. Guillot, who declared unto me, the undersigned Notary Public, that he is the attorney for Carlisle Sapenter and Helen Evans Sapenter, petitioners for Writ of Certiorari in the above entitled matter; that he hereby certifies that on this date he has served a copy of the foregoing application and petition for Writ of Certiorari to the United States Supreme Court on James Flanagan, attorney for Dreyco, Incorporated, by placing same in the United States mail to his address at 3525 North Causeway Boulevard, Metairie, Louisiana, and the Clerk of the Fifth Circuit Court of Appeals by mailing same to the Clerk's Office at the United States Courthouse Building, New Orleans, Louisiana.

_____

JESSE S. GUILLOT

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 21st
DAY OF February, 1972.

s/Melvin J. Duran
Notary Public

Printed Copies Mailed: _____

APPENDIX "A"

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

CARLISLE SAPENTER and HELEN EVENS SAPENTER	)	CIVIL ACTION
	)	NO. 70-1795
Plaintiffs	)	
versus	)	
	)	
DREYCO, INCORPORATED	)	SECTION "E"
	)	
Defendant	)	

Jesse S. Guillot, Esq.
New Orleans, Louisiana
Attorney for Plaintiffs

James Flanagan, Esq.
New Orleans, Louisiana
Attorney for Defendant

CASSIBRY, District Judge:

Plaintiffs seek injunctive relief and damages under the Truth In Lending Act, 15 U.S.C. §§1601 et seq., for defendant's alleged failure to make certain disclosures required by the Act in the execution of a mortgage on plaintiffs' home. The defendant has filed a motion to dismiss on the grounds of res judicata, estoppel, substantial compliance with the Act, and exempted transaction. Plaintiffs' motion for preliminary injunction and defendant's motion to dismiss came on to be heard on February 24, 1971. At that time, the Court granted the parties one week to file additional memoranda. The parties subsequently filed a joint stipulation to the effect that the Court should decide both the motion to dismiss and the merits of the complaint for injunctive relief and damages based on the pleadings and memoranda on file, together with the transcript of a previous state court hearing. Because I agree with defendant's contention that the transaction involved was one exempted from the Truth In Lending

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Act, the motion by defendant to dismiss will be granted.

Prior to August, 1969, the plaintiffs owned two pieces of real estate in the City of New Orleans. One piece of property was located at 5822 Baccich Street, and served as plaintiffs' home until September 1970, when they sold the property and moved to Texas. There existed two mortgages on this property in August, 1969.

Plaintiffs also owned a piece of property located at 2408 Chartres Street, a six-unit apartment building. At the time they had purchased this property, three mortgages had been executed upon it. In the course of a few months, plaintiffs fell behind in their mortgage payments and, to avoid foreclosure on the apartment building by Dreyco, agreed to execute a mortgage on the Baccich Street property. 1/ This latter mortgage was executed on August 26, 1969, and secured a mortgage note in the amount of $2,550.00 which represented the amount that plaintiffs were in arrears on their mortgage payments on the Chartres Street property, plus certain attorneys' fees and costs.

In February, 1970, plaintiffs instituted suit in the Civil District Court of Orleans Parish, seeking injunctive relief and damages, and alleging that in executing the August 26, 1969 mortgage, the defendant Dreyco had used fraud and deceit, and that certain disclosure requirements of the Truth In Lending Act were not fulfilled. The matter was heard on a rule for preliminary injunction and, on March 26, 1970, Judge Sanford Levy rendered judgment denying the preliminary injunction on the grounds that (1) the defendant was not guilty of any fraud or deceit, (2) the transaction involved was for business purposes and, hence, exempt from the Truth In Lending Act, (3) there was substantial compliance with the requirements of the Truth In Lending Act even if the transaction was not exempt, and

(4) assuming arguendo that there was a violation of the Truth In Lending Act, this would not give plaintiffs the right to an injunction against enforcement of the mortgage but would merely allow the recovery of civil damages, costs and attorneys' fees.

No appeal was taken by plaintiffs from Judge Levy's adverse ruling. On July 6, 1970, the instant suit was filed, being for all practical purposes identical to the earlier state court action. Subsequently, on September 15, 1970, plaintiffs succeeded in having Judge Thomas Early of the Civil District Court grant an ex parte motion to dismiss their state court suit "without prejudice, reserving all their rights to proceed in the United States District Court."

One of defendant's main arguments in support of its motion to dismiss the instant complaint is that the issues between the parties are res judicata by virtue of Judge Levy's decision of March 26, 1970, since plaintiffs failed to appeal from that ruling. Plaintiffs, on the other hand, vigorously contend that the doctrine of res judicata is inapplicable because the state court decision was merely interlocutory in nature, being on a motion for a preliminary injunction, and that the merits of the suit for permanent injunction were never reached in state court. While an interesting legal question is thus posed for consideration, I find no need to reach that question at this time because the transaction involved was exempt from coverage of the Truth In Lending Act.

The Truth In Lending Act, enacted in 1968, was intended to provide the American consumer with truth-in-lending by providing full disclosure of the terms and conditions of finance charges both in credit transactions and in offers to extend credit. The Act neither regulates the credit industry, nor does it impose ceilings on credit charges. It provides for full disclosure of credit charges, rather than regulation of the terms and conditions under which credit may be

extended. Congress believed that such full disclosure would encourage a wiser and more judicious use of consumer credit. 1968 U.S. Code Congressional and Administrative News, 90th Congress, Second Session, pages 1962-63.

In addition to provisions providing for enforcement by the Federal Trade Commission and other federal agencies, the Act provides for a civil action for damages by a consumer against a creditor who fails to make the required disclosures. 15 U.S.C. §1640(a). Jurisdiction of such an action lies in either federal or state court. 15 U.S.C. §1640(e). Not all credit transactions are covered by the Truth In Lending Act, however, and the Act expressly provides that it does not apply to "[c]redit transactions involving extensions of credit for business or commercial purposes * * *." 15 U.S.C. §1603(1).

The defendant contends that the August 26, 1969 mortgage on the Baccich Street property was executed to secure a business transaction, i.e., the extension of a past-due obligation on investment rental property to avoid foreclosure thereon. Thus, defendant argues, the transaction was one involving extension of credit "for business or commercial purposes", and therefore exempt from coverage of the Truth In Lending Act. 15 U.S.C. §1603(1). The plaintiffs contend they were "not in the business of owning real estate", but rather were "regularly employed" and owned the apartment building merely as an investment, collecting rents in their spare time.

The Truth In Lending Act exemption of credit extensions "for business or commercial purposes" does not distinguish between full-time and part-time businesses. Furthermore, the Truth In Lending Act was enacted as part of the Consumer Credit Protection Act of 1968, and specifically deals only with consumer credit transactions, characterized as "one in which the party to whom credit is offered or extended

is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes." 15 U.S.C. §1602(h). (Emphasis added.) Defendant's extension of credit to plaintiffs on August 26, 1969, was certainly not for "personal, family, household or agricultural purposes." Rather, it was to extend a past due obligation which plaintiffs had incurred on rental property which they purchased and owned as an investment. Plaintiffs intended to rent the apartments and derive revenues therefrom. While they may have had other, full-time occupations, plaintiffs were nevertheless engaged in the "business" of owning and renting real estate for profit. Extensions of credit for such purposes were not intended by Congress to come within the purview of the Truth In Lending Act. 15 U.S.C. §1603(1).

Plaintiffs' reliance on 15 U.S.C. §1635 is misplaced. That provision provides:

> §1635. Right of rescission as to certain transactions--Disclosure of obligor's right to rescind
>
> (a) Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest is retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this part, whichever is later by notifying the creditor, in accordance with regulations of the Board of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

Apparently, plaintiffs' argument is that because the August 26, 1969 mortgage was placed on the Baccich Street property, which was used as their residence, §1635(a) required defendant to disclose to

plaintiffs their right to rescind the transaction within three business days. This argument overlooks, however, the fact that 16 U.S.C. §1603(1) exempts all "[c]redit transactions involving extensions of credit for business or commercial purposes" from coverage of the Truth In Lending Act. In determining whether a particular transaction is exempt, therefore, the purpose of the transaction or extension of credit is controlling, not the property on which the security interest is retained. Thus, in the instant case, the extension of credit was for a business purpose and §1635(a) is of no avail to plaintiffs even though the mortgage was placed on their residence.

For the foregoing reasons, the motion by defendant to dismiss the complaint is GRANTED. The Court does not reach and expresses no opinion on the various other issues raised by the pleadings.

IT IS SO ORDERED.

Jack J. Gainsburg
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana

April 27, 1971.

Footnotes

1/ Plaintiffs allege they were unaware that a mortgage was to be placed on the Baccich Street property. After reading the state court testimony, I find this allegation to be unbelievable. Moreover, federal jurisdiction rests on the Truth In Lending Act claim. Since I conclude that the transaction involved was exempt from coverage of the Act, the case must be dismissed.

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2186

Summary Calendar*

CARLISLE SAPENTER and HELEN EVANS SAPENTER,

Plaintiffs-Appellants,

versus

DREYCO, INCORPORATED,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

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(November 30, 1971)

Before BELL, AINSWORTH, and GODBOLD, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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*Rule 18, 5 Cir.; See *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al.*, 5 Cir. 1970, 431 F.2d 409.

[1]See *NLRB v. Amalgamated Clothing Workers of America*, 5 Cir. 1970, 430 F.2d 966.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

APPENDIX "C"

IN THE
UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CARLISLE SAPENTER and HELEN EVANS SAPENTER, Plaintiffs-Appellants	*	
versus	*	NO. 71-2186
DREYCO, INCORPORATED Defendant-Appellee	*	

* * * * * * * * * * * * * *

PETITION FOR REHEARING

The petition of Carlisle Sapenter and Helen Evans Sapenter, plaintiff-appellants in the above entitled appeal, respectfully represents:

1

That the judgment rendered in the above entitled matter on November 30, 1971 by this Court, which judgment affirmed the judgment of the United States District Court should be reversed for the following reasons.

2

That a third mortgage placed on petitioners' home at 5822 Baccich Street in the City of New Orleans violated U.S.C., Title 15, Section 1635, "Truth in Lending Act" if the defendant (Lender) failed to provide the property owner (petitioner) with:

1) A three (3) day written notice of intention to lien or mortgage petitioner's home, with the right to rescind. U.S.C. Title 15 ¶1635 (A)

2) A written statement disclosing the terms and conditions of the finance charges, interest, monthly payments, etc. as provided in the Truth in Lending Act, U.S.C. Title 15, ¶¶1605, 1631.

3

That a third mortgage lien filed against petitioner's home in violation of U.S.C. Title 15, ¶1635, "Truth in Lending Act", is null and void and should be rescinded until such time as the consumer, (plaintiffs in this case) was provided with:

1) A three (3) day written notice of intention to lien or mortgage petitioner's home, with the right to rescind. U.S.C. Title 15 ¶1635 (A)

2) A written statement disclosing the terms and conditions of the finance charges, interest, monthly payments, etc. as provided in the Truth in Lending Act, U.S.C. Title 15, ¶¶1605, 1631.

4

That the "Truth in Lending Act" exempts only first mortgage liens to finance the purchase of the property, (such as a homestead loan). U. S.C., Title 15, ¶1635(E).

5

That U.S.C. Title 15, ¶1603(1) does not apply to a 3rd mortgage on a person's property used as his home and to decide otherwise is contrary to the intent of Congress when it enacted the "Truth in Lending Act", U.S.C. Title 15, ¶1601, et c.

6

A third mortgage loan against petitioner's used as his home, proceeds of which were used to stop a foreclosure against a six unit apartment house which petitioners were purchasing to live in one unit and rent out the other five units was not, and should not, be interpreted as monies for "business purposes or commercial purposes" when petitioner was employed as a seaman and was purchasing the six unit apartment house as his home.

7

That the Consumer Credit Guide, published by the Commerce Clearing House, Inc. defines a residence under ¶2510(Y) as follows:

> "Residence means any real property in which the customer resides or expects to reside. The term includes a parvel of land on which the customer resides or expects to reside".

8

That it was error for this Court to interpret U.S.C. Title 15, ¶1603(1) which provides an exemption for the extension of credit for business or commercial purposes apply to

a third mortgage loan placed against plaintiffs' property, used as his home violates the intent of Congress and the purpose for the enactment of the "Truth in Lending Act".

9

That the intent of the "Truth in Lending Act" was to provide the owner of a home or a person who was in the process of purchasing a home with a written notice that his property (home) would be mortgage and with a written disclosure statement of the loan, the interest, the payments, yearly percentage intended by Congress to inform the homeowner or the purchaser of a home a full disclosure and intent to mortgage his property.

10

For this Court to rule that the three day written notice of Right of Recission and the written disclosure statement of the terms of the loan was not necessary when a person's home was mortgaged in order to stop a foreclosure on a six unit apartment building which petitioner was buying with the intention of using as his home is an error of law.

WHEREFORE, Carlisle Sapenter and Helen Evans Sapenter, plaintiffs-appellants prays that this Court grant a rehearing in this matter.

Petitioner further prays that this Court allow oral argument on the rehearing.

Respectfully submitted,

s/Jesse S. Guillot
Attorney for Carlisle Sapenter
and Helen Evans Sapenter
838 Gravier Street
New Orleans, La. 70112
PHONE: 522-7296

C E R T I F I C A T E

I certify that the above and foregoing petition for rehearing is presented in good faith and not for delay.

This, the 14th day of December, 1971 at New Orleans, Louisiana.

s/Jesse S. Guillot
JESSE S. GUILLOT

PROOF OF SERVICE

STATE OF LOUISIANA:

PARISH OF ORLEANS:

BEFORE ME, the undersigned authority personally came and appeared:

JESSE S. GUILLOT

who, declared after being duly sworn, that he is the attorney of record for Carlisle Sapenter and Helen Evans Sapenter, that he hereby certifies that on this date he served a copy of the foregoing petition for rehearing on James Flanagan, attorney for Dreyco, Incorporated by mailing same in the U.S. mail at his address, 3525 North Causeway Boulevard, Metairie, Louisiana, this the 14th day of December, 1971 at New Orleans, Louisiana.

s/Jesse S. Guillot
JESSE S. GUILLOT

SWORN TO AND SUBSCRIBED BEFORE ME, NOTARY, THIS, THE 14th DAY OF DECEMBER, 1971.

s/Gasper J. Schiro N.P.
NOTARY PUBLIC

U. S. COURT OF APPEALS
FILED
DEC 27 1971
EDWARD W. WADSWORTH
CLERK

APPENDIX "D"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2186
Summary Calendar*

CARLISLE SAPENTER and HELEN EVANS SAPENTER,
Plaintiffs-Appellants,

versus

DREYCO, INCORPORATED,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

(December 27 , 1971)

ON PETITION FOR REHEARING

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby Denied.

APPENDIX "E"

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
Jul 6 3 24 PM '70
BENJAMIN W. [illegible]
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NO. 70-1795

DIVISION

CARLISLE SAPENTER & HELEN EVENS SAPENTER
VS.
DREYCO, INCORPORATED

SECTION A

COMPLAINT FOR INJUNCTIVE RELIEF AND TO RECOVER DAMAGES

The complaint of Carlisle Sapenter and his wife, Helen Evens Sapenter, persons of age and now residing in the State of Texas, respectfully represents:

I.

That the defendant, Dreyco, Incorporated, doing business in the State of Louisiana, putportedly secured a note and mortgage in the sum of $2500.00 on properties owned by petitioners located at 5822 Baccich St., in the City of New Orleans on August 26, 1969, recorded at MOB 2164, folio 195, in the Mortgage Office of the Parish of Orleans, on the properties described as follows, to-wit:

> Two certain lots of ground, together with all the buildings and improvements thereon, and all the rights, ways, privileges, servitudes and advantages thereunto belonging or in anywise appertaining, situated in the Third District of the City of New Orleans, in Square No. 4606 which is bounded by Baccich (late Rabbits), Pauxburg, Athis and Lafaye (late Deers) Streets and designated as Lots Nos. 6 and 7 on a certain survey made by J. J. Krebs & Sons, Inc., of date March 13, 1967, a print whereof is annexed to an act passed before Cuthbert S. Baldwin, Notary Public, dated April 14, 1967; and according to which said lots adjoin each other and measure, each, 26 feet, 8 inches front on Baccich Street, the same width in the rear by a depth between equal and parallel lines of 100 feet, subject to the fence encroachments shown on said survey, Lot No. 6 commences at a distance of 133 feet 4 inches from the corner of Baccich and Athis Streets.

The improvements bear the Municipal No. 5822 Baccich Street.

II.

That on the date of the alledged lien and mortgage, your petitioners resided at the Baccich Street property; that the defendant failed to provide petitioner with:

a) A 3 day notice of right of Rescission

b) A disclosure Statement of amount of loan, annual percentage total interest paid;

all as provided for in the "Truth in Lending Act" which become effective July 1, 1969. (15 U.S.C.A. Sec.105).

JS-5

15 CRD

III.

That your defendant has threatened to foreclose upon the note and mortgage secured on this property.

IV.

That petitioners further allege that this mortgage and lien on their property at 5822 Baccich Street was obtained through error, mistake and through deceit introduced on them by the representatives of the defendant.

V.

That the plaintiff has no adequate remedy at law, or otherwise for the harm and damage done or threatened to be done by the defendant, because the State of Louisiana Civil District Court has refused to comply with the "Truth in Lending Act", which became effective July 1, 1969 (15 USCA Sec.105, etc.).

VI.

That irreparable harm, damage and injury will follow and be done to the plaintiffs unless the acts and conduct of the defendant above complained of are restrained and enjoined.

VII.

That petitioners are entitled to recover as damages under the Truth in Lending Act the sum of $2000.00 plus interest from date of demand, plus the attorneys fees as damages together with the cancellation of the mortgage act which has been registered against their property in MOB 2164, folio 195 in the Parish of Orleans.

VIII.

That prior to the mortgage and note which they, in error and through deceit, secured on their residence at 5822 Baccich Street in the City of New Orleans, your petitioners had on or about April 7, 1969, agreed to purchase from the defendant, property at 2408 Chartres Street for an amount of $56,000.00 consisting of 6 rental units, all of which units were to be complete with wall to wall carpeting, stove, refrigerator, lockers, plumbing, etc., and complete renovation as of the date of the purchase by petitioners; that your petitioners were unable to pay for the purchase of the six-unit apartment house and was induced by the defendant to sign three separate mortgage notes for the purchase thereof; but discovered after the passing of the act of sale, that the six apartment units were not ready for occupancy, did not contain wall to wall carpeting, did not contain a refrigerator, did not contain air-conditioning units, did not contain completed plumbing and heating, some of the property in this repair all contrary to the obligation of the contract and the intent of the parties for the purchase of the six-unit apartment house for $56,000.00.

IX.

That after the passing of the sale for the six-unit apartment houses your petitioners were not given possession for a period of more than four months; that this, together with the incompleteness of the units, caused petitioners to sustain a loss of rentals which they should have obtained from the commencement or subsequent to the sale of $3500.00; that additional it was necessary that they work on the six-units in order to place them in occupancy all at a cost of $4500.00.

X.

That because of the default of contract by the defendants the inducement perpetrated upon your petitioners to sign three mortgage notes for the purchase of the six-unit apartment house at 2408 Chartres Street, your petitioners, not receiving any rents from the incompleted apartment units sold to them, was unable to pay on the three mortgage notes and because of this inability caused by the defendants, your petitioners were caused to be foreclosed upon on the property at 2408 Chartres Street in the City of New Orleans.

XI.

That your defendants filed a foreclosure suit in the Civil District Court of the Parish of Orleans, Numbered 399-990, entitled Dreyco Inc. vs. Helen Evans, wife of/and Carlisle Sapenter; that subsequent to the filing of said foreclosure suit to foreclose the property at 2408 Chartres Street (the six unit apartment house) your defendants induced and pursuaded petitioners to execute another mortgage which they led petitioners to believe would be on the same six unit apartment building; that petitioners in order to avoid a further foreclosure proceeding was deceived and induced to execute a mortgage note which they later discovered was a note on their residence at the Baccich Street address, the property first above described and not on the six unit apartment building at 2408 Chartres Street.

XII.

Your petitioners had subsequently discovered that the defendants had failed to give them a three day notice of right of recision or a complete disclosure statement on the mortgage which they were perpetrated to execute and sign on their residence at 5822 Baccich Street in the City of New Orleans.

XIII.

That subsequent thereto your petitioners had an opportunity to move to the State of Texas and proceeded to sell their residence at 5822 Baccich Street in the City of New Orleans at which act of sale it was discovered that a lien and mortgage had been filed against this property by the defendant; that this was the first knowledge that your petitioners had of any lien and mortgage filed against their residence on Baccich Street, and they immediately served notice upon the defendant to remove this mortgage from their property.

XIV.

That the defendants have violated the provisions of the "Truth in Lending Bill" in said act of Mortgage and lien filed against the property on Baccich Street, registered in MOB 2164, folio 195 in the Mortgage Office of the Parish of Orleans is null and void and should be ordered cancelled therefrom.

WHEREFORE, petitioner prays that the defendant be permanently enjoined from taking any action whatsoever, particularly foreclosing against the property described in the above petition located at 5822 Baccich Street, or from enforcing any of the provisions from an act of lien and mortgage on that property dated August 26, 1969, recorded MOB 2164, folio 195, and that petitioners further pray that during the pendency of this action a temporary injunction issue to enjoin and restrain the defendants from the acts and conducts aforesaid.

Petitioners further pray that the defendants be ordered to answer the herein complaint and after normal delays and due proceedings had there be judgment herein in favor of your petitioners and against your defendant, Dreyco, Inc. in the full and true sum of $6500.00 plus interest from date of demand and all costs of these proceedings and such legal fees as allowed by this Honorable Court.

That on the trial of this matter, the lien and mortgage executed on August 26, 1969, on the property at 5822 Baccich Street, recorded MOB 2164, folio 195 in the Mortgage Office, Parish of Orleans, be cancelled and made null.

JESSE S. GUILLOT, Attorney for
Haten Evans Sapenter and Carlisle Sapenter
First Homestead Building
Room 201
838 Gravier Street
New Orleans, Louisiana 70112
522-7296

PLEASE SERVE:

DREYCO, INC. though it's agent

GEORGE REYNOLDS
17 Fountainbleau Drive
New Orleans, Louisiana 70125

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NO. 504-510

DIVISION

CARLISLE SAPENTER &
HELEN EVENS SAPENTER
VS.
DREYCO, INCORPORATED

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, personally came and appeared:
CARLISLE SAPENTER AND HELEN EVANS SAPENTER
both of whom deposed unto me Notary that all the facts and allegations contained in the above petition are true and correct; that the defendants have threatened to foreclose against the property at 5822 Baccich Street; that they were not aware that a mortgage existed against their property at 5822 Baccich Street until they sold the property and ran certificates prior to removing themselves from the State of Louisiana to the State of Texas; that said Act of Lien and Mortgage they were induced to file without full knowledge of what they were executing and that said act of mortgage was executed without the three day notice of the right of rescission and without a disclosure statement of the interest charged, the annual percentage, the length of the loan, the total amount of monthly payments, or such other information that they are required to receive under the "Truth in Lending Act".

Carlisle Sapenter
CARLISLE SAPENTER

Helen Evans Sapenter
HELEN EVANS SAPENTER

SWORN TO AND SUBSCRIBED BEFORE
ME, THIS 29 DAY OF JUNE, 1970

Jesse S. Guillot
NOTARY PUBLIC

AUG 17 1970

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

JAN 19 1 03 PM '71
BENJAMIN M. REICH
CLERK

No. 70-1795 Division "A"

CARLISLE SAPENTER &
HELEN EVANS SAPENTER

versus

DREYCO, INCORPORATED

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

MOTION TO DISMISS FOR LACK OF JURISDICTION

NOW INTO COURT, through undersigned Counsel, comes Dreyco, Inc., made defendant herein, and opposes the Petition for Preliminary Injunction filed herein by plaintiff, and moves the Court to dismiss these proceedings for lack of jurisdiction over the subject matter and for the following reasons:

I

That the plaintiff brought an identical suit on the identical allegations in Proceedings No. 504-510 of the Civil District Court for the Parish of Orleans, State of Louisiana, Division "D" on February 26, 1970, copy of the said petition being attached hereto as Exhibit "A." In said suit filed July 26, 1970, Sapenter was a resident of Louisiana.

II

That a trial of said Petition for a Preliminary Injunction was held on March 20, 1970, and judgment rendered on March 26, 1970, denying said petition with reasons, a copy of said Judgment and the reasons therefor being attached hereto as Exhibit "B."

III

No writs or appeals were taken from said Judgment and same is now final.

FEE
PROCESS
CHARGE
INDEX
ORDER
HEARING
DOCUMENT NO.

IV

That at that time the State Court had jurisdiction over the subject

APPENDIX "F"

A F F I D A V I T

STATE OF LOUISIANA

PARISH OF ORLEANS,

BEFORE ME, the undersigned and Notary, personally came and appeared:

CARLISLE L. SAPENTER, and
HELEN EVANS SAPENTER

both of whom after being duly sworn did declare unto me, Notary, that they are persons of age presently residing in Houston, Texas; that Carlisle Sapenter is a merchant seaman, having sailed upon the seas for more than five (5) years from date; that on April 7, 1969, they agreed to purchase from Dreyco, Inc. an apartment house at 2408 Chartres Street, in the City of New Orleans for $56,000.00; that said apartment house was to have complete units, with air conditioning, stoves and refrigerators; that after the sale of the property to them, they discovered that the defendant had not completed the work on the apartment house and they could not lease the units for rent in the apartment until more than (5) months after the sale of the property to them; that it was intention to sell their home located at 5822 Baccich Street in the City of New Orleans, to live in one of the apartments in the apartment unit which they had purchased from the defendant and rent out the other units; since they were not able to collect any rents from any of the units from the date of the sale to some four (4) months subsequent to the sale. It was impossible to pay the defendant on the three mortgage

notes to which they were indebted for the purchase of the Chartres Street property, and Dreyco, Inc. filed a foreclosure suit against them; they were persuaded to sign another mortgage, believing it to be a mortgage on the Chartres Street property for the amount of $2,500.00 due as a result of the foreclosure; that in the meantime they had offered their property on Baccich Street for sale since they intended to move into one of the apartment units of the Chartres street property; that the sale on Chartres took place without the benefit of certificates, a sale and assumption, copies of the notarial statements issued at the sale of the Baccich Street property indicates that the Homestead balance was assumed and a second mortgage held by B. A. Castellon was paid; Sapenter received at that sale only $874.46; they had no knowledge at that time, and informed the Notary at the Baccich Street sale that they had no other liens against their property; several months after the sale of the Baccich Street property they received a demand notice that a foreclosure would be filed against the Baccich street property which they had just sold if they did not pay the mortgage in the sum of $2,500.00, this was the first knowledge they had their Baccich Street home had been liened or mortgaged; since they sold the property without clearing this mortgage of which they had no knowledge of at the time, they will be responsible to the purchasers of the property and therefore had to proceed in the above litigation to clear themselves from the Dreyco mortgage and to ask this Court to restrain and enjoin the foreclosure of that mortgage against the Baccich Street property; that they were not on the date of August 26, 1969, previous thereto or thereafter in the Real Estate business; that your affiants Carlisle Sapenter has been and is a merchant seaman;

that they intended at the time of the purchase of the Chartres Street property to reside therein as their home, and to rent out the other units; that they proceeded to sell the Baccich property after the sale of the Chartres property, but because of all of the delays encumbered in getting into the Chartres street property they fell behind on their three mortgage notes, which mortgage notes were $46,000.00; that they did not receive a three day written notice prior to the mortgage which they allegedly signed on the Baccich street property for Malvern Driscoll on August 26, 1969, nor did they receive a full disclosure of the interest charges and the yearly percentage rate as required by USC 15 Section 1603, etc.

s/Carlisle L. Sapenter
CARLISLE L. SAPENTER

s/Helen Evans Sapenter
HELEN EVANS SAPENTER

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS, THE 8th
DAY OF March, 1971

s/Linda Wood (SEAL)
NOTARY PUBLIC

LINDA WOOD
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1971

APPENDIX "G"

UNITED STATES COURT OF APPEALS
Fifth Circuit
Office of the Clerk

Edward W. Wadsworth
Clerk

Room 408-400 Royal St.
New Orleans, La. 70130

January 24, 1972

TO ALL COUNSEL AND THE DISTRICT CLERK:

No. 71-2186 - Carlisle Sapenter and Helen Evans Sapenter vs. Dreyco, Inc.

MANDATE RECALLED AND STAYED TO:
February 21, 1972
(See Order Enclosed)

Gentlemen:

The court has this day granted the recall and stay of the mandate to the date shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore will not be routinely prepared by this office (38LW 3502).

Enclosed is a copy of the opinion, judgment and order denying rehearing which are still required by the Supreme Court to be incorporated as an appendix to the petition.

By copy of this letter to the clerk of the District Court, we request that he return the opinion and judgment issued as mandate on January 4, 1972.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By s/Claudette Staiger
Deputy Clerk

enc.

cc Mr. Jesse S. Guillot
Mr. James Flanagan

U.S. Court of Appeals
FILED
Jan 24 '72
Edward W. Wadsworth
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

NO. S71-2186

CARLISLE SAPENTER and
HELEN EVANS SAPENTER,

Plaintiffs-Appellants,

versus

DREYCO, INCORPORATED,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

Before BELL, AINSWORTH and GODBOLD,
Circuit Judges.

ON CONSIDERATION OF THE MOTION of plaintiffs-appellants for recall and stay of judgment issued as mandate in the above numbered and entitled cause, pending an application for a writ of certiorari to the Supreme Court of the United States,

IT IS ORDERED that the judgment issued as mandate, be recalled and stayed to and

including Feb. 21, 1972, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within said period there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition has been filed.

IT IS FURTHER ORDERED that the Clerk shall issue the judgment as mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the above period unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

APPENDIX "H"

IN THE
UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CARLISLE SAPENTER, and HELEN EVANS SAPENTER, Plaintiffs-Appellants	:	
versus	:	NO. 71-2186
DREYCO, INCORPORATED Defendant-Appellee	:	

: : : : : : : : : : : : : : : :

MOTION TO EXTEND STAY ORDER

On motion of Carlisle Sapenter and Helen Evans Sapenter, petitioners-appellants, in the above entitled appeal and on suggesting to the Court that this Court recalled and stayed the Judgment issued as a mandate in the above entitled matter to and including February 21, 1972; that the petitioners have prepared a petition of Certiori to be filed with the United States Supreme Court; that said petition and annexed documents have been in the hands of A. B. Letter Service Co. in the process of being printed for filing with the United States Supreme Court; that the petitioner needs an extension of time to and including March 15, 1972, so that A. B. Letter Service Co., can complete the printing of the Petition of Certiori, being prepared to be filed with the United States Supreme Court.

IT IS ORDERED that the mandate issued in

the above entitled matter be recalled up to and including March 15, 1972.

This, the _____day of February, 1972, at New Orleans, Louisiana.

_____
JUDGE

_____
JESSE S. GUILLOT, Attorney for
Carlisle Sapenter and
Helen Evans Sapenter
838 Gravier Street
New Orleans, La.
Phone: 522-7296

APPENDIX "I"

FEDERAL RESERVE REGULATIONS

. . . . the full official texts of all regulations issued by the Board of Governors of the Federal Reserve System, as amended to date

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REGULATIONS GOVERNING ORGANIZATION, PROCEDURE AND PRACTICE

See ¶ 38,101 for regulations issued by the Federal Reserve Board relating to organization, procedure, and practice for formal hearings, and ¶ 38,421 for regulations issued by the Federal Open Market Committee relating to its organization, information and procedure. These regulations were issued in compliance with the requirements of the Administrative Procedure Act of 1946.

APPENDIX "J"

Regulation Z

Part 226—TRUTH IN LENDING

[¶ 33,201]

The Board of Governors of the Federal Reserve System has issued Regulation Z (12 CFR 226), effective July 1, 1969, to implement the Truth in Lending Act. The regulations were issued in 34 Federal Register 2002, February 11, 1969. The text of the truth-in-lending regulations is also being published by Commerce Clearing House, Inc. in a publication containing the Uniform Consumer Credit Code. The publication containing 440 pages includes CCH Explanations for both the truth-in-lending rules and the Uniform Consumer Credit Code along with the Consumer Credit Protection Act, Regulation Z, Supplement I to Regulation Z, and the Uniform Consumer Credit Code with the final comments of the National Conference of Commissioners on Uniform State Laws.

The publication, entitled *New Rules on Consumer Credit Protection*, is available from Commerce Clearing House, Inc., 4025 W. Peterson Ave., Chicago, Ill. 60646.

➡ Full coverage of Regulation Z, issued by the Board of Governors of the Federal Reserve System to implement the Consumer Credit Protection Act, including state law requirements and transactions exempted by the Board from the federal law will be found in the CCH CONSUMER CREDIT GUIDE.

APPENDIX "K"

Consumer CREDIT GUIDE

COMMERCE CLEARING HOUSE, INC.
PUBLISHERS of TOPICAL LAW REPORTS

APPENDIX "L"

TRUTH-IN-LENDING

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APPENDIX "M"

REGULATION Z—(12 CFR 226)

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APPENDIX "N"

[*Residence*]

(y) "Residence" means any real property in which the customer resides or expects to reside. The term includes a parcel of land on which the customer resides or expects to reside.

[*Security Interest*]

(z) "Security interest" and "security" mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

[*State*]

(aa) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. [Comp. at ¶ 1001, 1240, 1305, 1400, 1500, 1600, 1700, 1910, 1920, 2300—2320, 2330—2385.]

.04 **Sec. 226.201. Lay-Away Plans as extensions of credit.** (a) Many vendors offer Lay-Away Plans under which they retain the merchandise for a customer until the cash price is paid in full and the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the merchandise.

(b) A purchase under such a Lay-Away Plan shall not be considered an extension of credit subject to the provisions of Regulation Z. [Comp. at ¶ 2335.]

[*Board Interpretation, May 5, 1969; Interprets and Applies 15 U. S. C. 1602* [¶ 3007], 1604 [¶ 3009]; *34 F. R. 7607.*]

.05 **Sec. 226.202. Security interest—Confession of judgment—Cognovit notes.** (a) Under § 226.2(z) [¶ 3510] "security interest" is defined to include confessed liens whether or not recorded and, in general, to include any interest in property which secures payment or performance of an obligation. In certain transactions involving a security interest, under § 226.9 [¶ 3585, *et seq.*] the customer has a right of rescission.

(b) In some of the states, confession of judgment clauses or cognovit provisions are lawful and make it possible for the holder of an obligation containing such clause or provision to record a lien on property of the obligor simply by recordation entry of judgment; the obligor is afforded no opportunity to enter a defense against such action prior to entry of the judgment.

(c) Since confession of judgment clauses and cognovit provisions in such states have the effect of depriving the obligor of the right to be notified of a pending action and to enter a defense in a judicial proceeding *before* judgment may be entered or recorded against him, such clauses and provisions in those states are security interests under § 226.2(z) [¶ 3510] and for the purposes of §§ 226.7(a)(7) [¶ 3555], 226.8(b)(5) [¶ 3566], and 226.9 [¶ 3585, *et seq.*] This is the case even if the judgment cannot be entered until after a default by the obligor.

(d) Confession of judgment clauses and cognovit provisions which, by their terms, exclude a lien on all real property which is used or is expected to be used as the principal residence of the customer, would not bring a transaction under the provisions of § 226.9 [¶ 3585, *et seq.*]. [Comp. at ¶ 2385.]

[*Board Interpretation, May 26, 1969; 34 F. R. 8698.*]

.06 **Sec. 226.203. Open end credit distinguished from other credit.** (a) The fundamental qualification for "open end credit" under § 226.2(r) [¶ 3510] is that consumer credit be extended on an account pursuant to a plan under which (1) the creditor may permit the customer to make purchases or obtain loans from time to time directly or indirectly from the creditor, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in instalments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance. Under an open end credit account plan, it is con-

[¶ 3577] **Series of Single Payment Obligations**

Reg. Sec. 226.8 (contd.). (m) Any extension of credit involving a series of single payment obligations shall be considered a single transaction subject to the disclosure requirements of this part.

[¶ 3578] **Permissible Periodic Statements**

Reg. Sec. 226.8 (contd.). (n) If a creditor transmits a periodic billing statement [18] other than a delinquency notice, payment coupon book, or payment passbook, or a statement, billing, or advice relating exclusively to amounts to be paid by the customer as escrows for payment of taxes, insurance, and water, sewer, and land rents, it shall be in a form which the customer may retain and shall set forth

(1) The annual percentage rate or rates; and

(2) The date by which, or the period, if any, within which payment must be made in order to avoid late payment or delinquency charges.

[¶ 3579] **Discount for Prompt Payment**

Reg. Sec. 226.8 (contd.). (o) Except as provided under § 226.3[d), the amount of any discount allowed for payment of a single payment obligation on or before a specified date, or charge for delaying payment after a specified date, shall be disclosed on the billing statement as a finance charge imposed on the least amount payable in satisfaction of the obligation (amount financed) for the period of time between the specified date and the due date of the obligation, or in the absence of a designated due date, the date the billing cycle ends. Except as provided in paragraph (b)(2) of this section, each such billing statement shall, in addition to stating the amount of that "finance charge," using that term, state the "annual percentage rate," using that term, computed so that it may be disclosed with an accuracy to the nearest quarter of 1 percent and determined by (1) dividing the amount of the finance charge by the amount financed; (2) dividing the quotient so obtained by the number of days between the specified date and the due date of the obligation, or in the absence of a designated due date, the date the billing cycle ends; and (3) multiplying the quotient so obtained (expressed as a percentage) by 365. (For example, a $1,000 purchase of grain, subject to terms of 2%/10 days, net 30 days, results in a "finance charge" of $20 and an amount financed $980 for a period of 20 days. The "annual percentage rate" is 37.24% which may be rounded to 37.25% or 37¼%.)

§ 226.9—RIGHT TO RESCIND CERTAIN TRANSACTIONS

[¶ 3585] **General Rule**

Reg. Sec. 226.9. (a) Except as otherwise provided in this section, in the case of any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer, the customer shall have the right to rescind that transaction until midnight of the third business day [19]

[18] Any statement, notice, or reminder of payment due on any transaction payable in instalments which is mailed or delivered periodically to the customer in advance of the due date of the instalment shall be a periodic billing statement for the purpose of this paragraph.

[19] For the purposes of this section, a business day is any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving, and Christmas.

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following the date of consummation of that transaction or the date of delivery of the disclosures required under this section and all other material disclosures required under this part, whichever is later, by notifying the creditor by mail, telegram, or other writing of his intention to do so. Notification by mail shall be considered given at the time mailed; notification by telegram shall be considered given at the time filed for transmission; and notification by other writing shall be considered given at the time delivered to the creditor's designated place of business.

[¶ 3586] **Notice of Opportunity to Rescind**

Reg. Sec. 226.9 (contd.). (b) Whenever a customer has the right to rescind a transaction under paragraph (a) of this section, the creditor shall give notice of that fact to the customer by furnishing the customer with two copies of the notice set out below, one of which may be used by the customer to cancel the transaction. Such notice shall be printed in capital and lower case letters of not less than 12 point bold-faced type on one side of a separate statement which identifies the transaction to which it relates. Such statement shall also set forth the entire paragraph (d) of this section, "Effect of rescission." If such paragraph appears on the reverse side of the statement, the face of the statement shall state: "See reverse side for important information about your right of rescission." Before furnishing copies of the notice to the customer, the creditor shall complete both copies with the name of the creditor, the address of the creditor's place of business, the date of consummation of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the customer may give notice of cancellation.

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW:

YOU HAVE ENTERED INTO A TRANSACTION ON (date) WHICH MAY RESULT IN A LIEN, MORTGAGE, OR OTHER SECURITY INTEREST ON YOUR HOME. YOU HAVE A LEGAL RIGHT UNDER FEDERAL LAW TO CANCEL THIS TRANSACTION, IF YOU DESIRE TO DO SO, WITHOUT ANY PENALTY OR OBLIGATION WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE OR ANY LATER DATE ON WHICH ALL MATERIAL DISCLOSURES REQUIRED UNDER THE TRUTH IN LENDING ACT HAVE BEEN GIVEN TO YOU. IF YOU SO CANCEL THE TRANSACTION, ANY LIEN, MORTGAGE, OR OTHER SECURITY INTEREST ON YOUR HOME ARISING FROM THIS TRANSACTION IS AUTOMATICALLY VOID. YOU ARE ALSO ENTITLED TO RECEIVE A REFUND OF ANY DOWNPAYMENT OR OTHER CONSIDERATION IF YOU CANCEL. IF YOU DECIDE TO CANCEL THIS TRANSACTION, YOU MAY DO SO BY NOTIFYING:

(Name of Creditor) at (Address of Creditor's Place of Business)

BY MAIL OR TELEGRAM SENT NOT LATER THAN MIDNIGHT OF (Date). YOU MAY ALSO USE ANY OTHER FORM OF WRITTEN NOTICE IDENTIFYING THE TRANSACTION IF IT IS DELIVERED TO THE ABOVE ADDRESS NOT LATER THAN THAT TIME. THIS NOTICE MAY BE USED FOR THAT PURPOSE BY DATING AND SIGNING BELOW.

I HEREBY CANCEL THIS TRANSACTION.

(Date) (Customer's signature)

(1) The right of rescission of the transaction may be exercised by any one of them, in which case the effect of rescission in accordance with paragraph (d) of this section applies to all of them; and

(2) Any waiver of the right of rescission provided in paragraph (f) of this section is invalid unless signed by all of them.

[¶ 3591] **Exceptions to General Rule**

Reg. Sec. 226.9 (contd.). (g) This section does not apply to:

(1) The creation, retention, or assumption of a first lien or equivalent security interest to finance the acquisition of a dwelling in which the customer resides or expects to reside.

(2) A security interest which is a first lien retained or acquired by a creditor in connection with the financing of the initial construction of the residence of the customer, or in connection with a loan committed prior to completion of the construction of that residence to satisfy that construction loan and provide permanent financing of that residence, whether or not the customer previously owned the land on which that residence is to be constructed.

(3) Any lien by reason of its subordination at any time subsequent to its creation, if that lien was exempt from the provisions of this section when it was originally created.

(4) Any advance for agricultural purposes made pursuant to paragraph (j) of § 226.8 under an open end real estate mortgage or similar lien, provided the disclosure required under paragraph (b) of this section, was made at the time the security interest was acquired by the creditor or at any time prior to the first advance made on or following the effective date of this part.

§ 226.10—ADVERTISING CREDIT TERMS

[¶ 3595] **General Rule**

Reg. Sec. 226.10. (a) No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state

(1) That a specific amount of credit or instalment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or instalments for that period and in that amount; or

(2) That no downpayment or that a specified downpayment will be accepted in connection with any extension of credit, unless the creditor usually and customarily accepts or will accept downpayments in that amount.

[¶ 3596] **Catalogs and Multi-page Advertisements**

Reg. Sec. 226.10 (contd.). (b) If a catalog or other multiple-page advertisement sets forth or gives information in sufficient detail to permit determination of the disclosures required by this section in a table or schedule of credit terms, such catalog or multiple-page advertisement shall be considered a single advertisement provided:

(1) The table or schedule and the disclosures made therein are set forth clearly and conspicuously, and

(2) Any statement of credit terms appearing in any place other than in that table or schedule of credit terms clearly and conspicuously refers to the page or pages on which that table or schedule appears, unless that statement

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to be used as the principal residence of the customer. As you have explained the applicable Massachusetts law, if the dealer begins to furnish materials without having a written contract, he would not be able to perfect a mechanic's lien against the customer's property, and therefore, no right of rescission would arise. Consequently, notice of rescission need not be given.

Excerpts from FRB Letter of November 4, 1969, by Milton W. Schober, Assistant Director.

[¶ 30,209] "CASH CARD" MERCHANDISING

This is in reply to your letter of October 31, 1969, regarding a "cash card" system of merchandising.

As we understand the proposed system, a "cash card" customer will be allowed to purchase merchandise for cash from participating merchants at a cash discount of 5%. If the customer charges the item, either in whole or in part, he loses the discount and is required to pay the gross price.

Under the provisions of § 226.4(a)(1) [¶ 3518] of Regulation Z, the 5% discount would be a "finance charge". The method of making disclosures in connection with discounts for prompt payment is set out specifically in § 226.8(o) [¶ 3579] of Regulation Z.

Excerpts from FRB Letter of November 5, 1969, by Robert P. Forrestal, Assistant Director.

[¶ 30,210] REAL ESTATE TRANSACTIONS

[Personal v. Business]

As to your initial comments, relating to the difficulty of distinguishing a business purpose from a personal, family, household, or agricultural one, the Board's staff realizes the depth of the problem. If we understand the thrust of your remarks, you maintain that, by definition of "business," there might be certain transactions in realty, sometimes even being of the residential variety as defined by Regulation Z, which do not fall under Truth in Lending. The criteria you suggest for categorizing these as "business" is the number of units involved, and you feel four would be a reasonable figure. At present, we have not reached a conclusion; however, the matter is under discussion, and one of the views being considered is similar to yours. Future developments on the topic will, of course, be public information. Until such time, the better practice is to disclose when in doubt.

Your final question requested guidelines for determining when an investment is for personal purposes and under Regulation Z and when it is for a business or commercial purpose and excluded. The answer, at this time, is similar to that given your first inquiry: The problem is under advisement, but, until there is a resolution, the best rule is to disclose in those cases where doubt exists.

[APR for Contruction Loans]

The second point in the correspondence made reference to a method of handling annual percentage rate computations in construction loans, using the method of computation which I suggested at our recent meeting in California. In general under this approach the interest which accrues on the loan during the period between the first and last advance is deducted in the computation and netted against the advances. However, such interest is not to be disclosed as a "prepaid finance charge." In that example, only the "points" would be disclosed as "prepaid finance charge."

The staff is now considering an even more simplified method of computing the annual percentage rate than the one I reviewed at our meeting. When and if the proposed method is adopted, a complete explanation of it will be made public information.

[First Mortgage Lender]

Your third item presented circumstances where a builder took back a second mortgage, which is rescindable under § 226.9 [¶ 3585], while a lending institution took the purchase

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[¶ 30,026] DECLARATION OF PURPOSE—EXEMPTIONS—DOLLARS-PER-HUNDRED OPTION

[Declaration of Purpose]

The Truth-in-Lending Act applies to extensions of credit for personal, family, household or agricultural purposes. Extensions of credit for business or commercial purposes are expressly exempted. The purpose for which credit is extended is a factual matter. A creditor choosing to rely on the business or commercial purposes exemption would have to satisfy himself that, in fact, the extension of credit was for these purposes. The task is not an easy one, and certainly a Declaration of Purpose would aid the creditor in making this determination. However, the extent to which a bank could rely on a signed Declaration of Purpose would, of course, be determined by whether or not it accurately reflected the actual purpose for which the credit was being extended as determined through the best efforts of the bank.

[Investments]

Your second question points up a very troublesome area—the problem of determining just when an extension of credit for investment purposes is primarily for personal investment purposes, and when it is for business investment purposes. Loans to individuals to purchase stock in the market as personal investments are probably covered under the Act. Likewise loans for real estate investments which are clearly personal investments and are unrelated to the customer's normal business are probably covered. However, loans to exercise stock options in closely held companies, or where real estate activities involve a significant portion of an individual's time might be classed as business loans. However, at this stage in the development of Truth-in-Lending, and in advance of judicial interpretations, I would think that prudence would dictate that a creditor err on the side of disclosure when making loans to individuals for private investments.

[Agricultural]

You inquire as to the coverage of loans to individuals or organizations for agricultural purposes. First of all, the Act only applies to extensions of credit to natural persons. Extensions of credit to organizations (as defined in § 226.2(s) of Regulation Z) are excluded. However, the definition of agricultural purpose is quite broad and would cover the activities you mention provided they are done "by a natural person who cultivates, plants, propagates, or nurtures those agricultural products." Note should be taken of § 226.3(a) which specifies that the exclusion for business or commercial purpose credit does not apply to agricultural purpose credit. That provision does not, however, modify the general rule that extensions of credit to organizations are exempt, whether or not made for agricultural purposes.

[Separate Statement]

You indicate that you plan to have your client use a separate Federal disclosure statement. In that case no reference to that statement need be contained in the contract itself. The Federal statement would, however, have to identify the transaction to which it relates.

[Dollars-Per-Hundred Option]

Section 226.6(j) of Regulation Z provides that the annual percentage rate at the option of the creditor may be expressed "in the form of a *corresponding* ratio of dollars per hundred dollars" in all January 1, 1971. Certain terminology is prescribed if this option is used: The dollars per hundred dollars disclosure must be the *corresponding* ratio, and not an add-on rate of dollars per hundred dollars. Although the disclosure of the add-on rate would be inconsistent with the Federal disclosures, its disclosure would be permissible provided the procedure set forth under § 226.6(c) is followed

Excerpts from FRB Letter of March 14, 1969, by Frederic Solomon, Director.

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